

Exhibit E

**(Previously Filed as Exhibit 116 to the Decl. of
Bryon Becker, Dkt. Nos. 646-17 & 650-9)**

HIGHLY CONFIDENTIAL

Page 1

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H I G H L Y C O N F I D E N T I A L

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

5

-----x
UNITED STATES, et al.,

6

7

Plaintiffs,

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vs.

Case No.

9

1:23-cv-000108

10

GOOGLE LLC,

11

Defendant.

12

-----x
HIGHLY CONFIDENTIAL
VIDEOTAPED DEPOSITION OF BENNEASER JOHN
New York, New York
Friday, September 8, 2023
9:17 a.m.

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Reported by:

Jennifer Ocampo-Guzman, CRR, CLR

JOB NO. 6082515

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	Page 2		Page 4
1		1	
2		2 APPEARANCES (Continued):	
3		3	
4		4 ORRICK HERRINGTON & SUTCLIFFE LLP	
5		5 Attorneys for nonparty Microsoft and the	
6		6 Deponent	
7		7 1152 15th Street, N.W.	
8		8 Washington, D.C. 20005-1706	
9	September 8, 2023	9 BY: EILEEN COLE, ESQ.	
10	9:17 a.m.	10 ALLEN DAVIS, ESQ., (via Zoom)	
11		11	
12		12 ALSO PRESENT:	
13	HIGHLY CONFIDENTIAL	13 CARLOS RIVERA, Videographer	
14	Videotaped Deposition of	14	
15	BENNEASER JOHN, held at the offices of	15	
16	Paul, Weiss, Rifkind, Wharton &	16	
17	Garrison LLP, 1285 Avenue of the	17	
18	Americas, New York, New York, pursuant	18	
19	to subpoena, before Jennifer	19	
20	Ocampo-Guzman, a Certified Realtime	20	
21	Shorthand Reporter and Notary Public of	21	
22	the State of New York.	22	
23		23	
24		24	
25		25	
	Page 3		Page 5
1		1 HIGHLY CONFIDENTIAL	
2	APPEARANCES:	2 THE VIDEOGRAPHER: Good morning,	
3		3 We are going on the record at 9:17 a.m.	
4	UNITED STATES DEPARTMENT OF JUSTICE	4 on September 8, 2023. Please note that	
5	Attorneys for Plaintiff United States	5 the microphones are sensitive and may	
6	325 7th Street, Suite 300	6 pick up whispering and minor	
7	Washington, DC 20004	7 conversations; and please mute your	
8	BY: JEFFREY VERNON, ESQ.	8 phones at this time. Audio and video	
9	KAITLYN BARRY, ESQ.	9 recording will continue to take place	
10	JEFF QUI, ESQ., (via Zoom)	10 unless all parties agree to go off the	
11		11 record.	
12	PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP	12 This is media unit number 1 of the	
13	Attorneys for Defendant Google LLC	13 video-recorded deposition of Benneaser	
14	1285 Avenue of the Americas	14 John taken by counsel for defendant, in	
15	New York, New York 10019	15 the matter of the United States of	
16	BY: KAREN DUNN, ESQ.	16 America versus Google LLC, filed in the	
17	ERICA SPEVACK, ESQ.	17 United States District Court, for the	
18	WILLIAM ISAACSON, ESQ. (p.m. session)	18 Eastern District of Virginia, case	
19	JULIA WOOD, ESQ., (via Zoom)	19 number 1:23-cv-000108-LMB-JFA. The	
20		20 location of this deposition is 1285	
21	AXINN, VELTROP & HARKRIDER LLP	21 Avenue of the Americas, New York, New	
22	Attorneys for Defendant Google LLC	22 York. My name is Carlos Rivera	
23	55 Second Street	23 representing Veritext and I'm the	
24	San Francisco, California 94105	24 videographer. The court reporter is	
25	BY: ISABELLA SOLORZANO, ESQ.	25 Jennifer Ocampo-Guzman also representing	

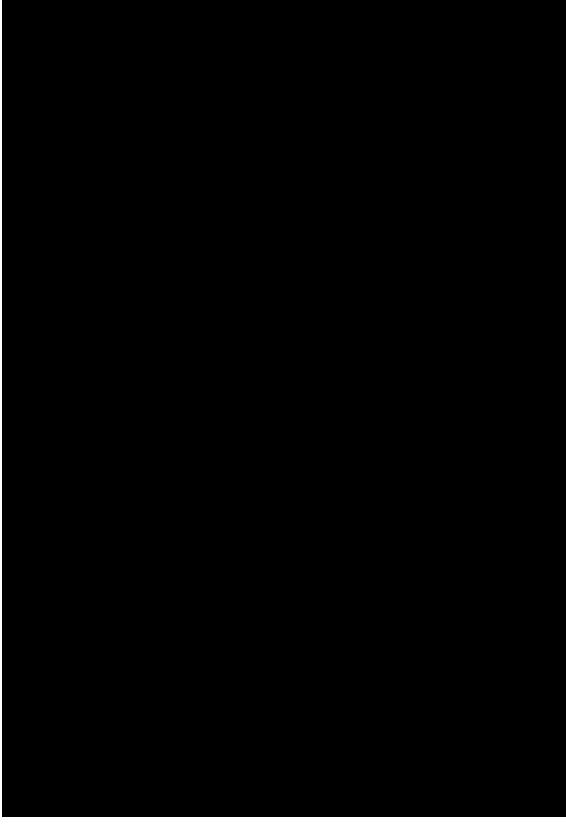
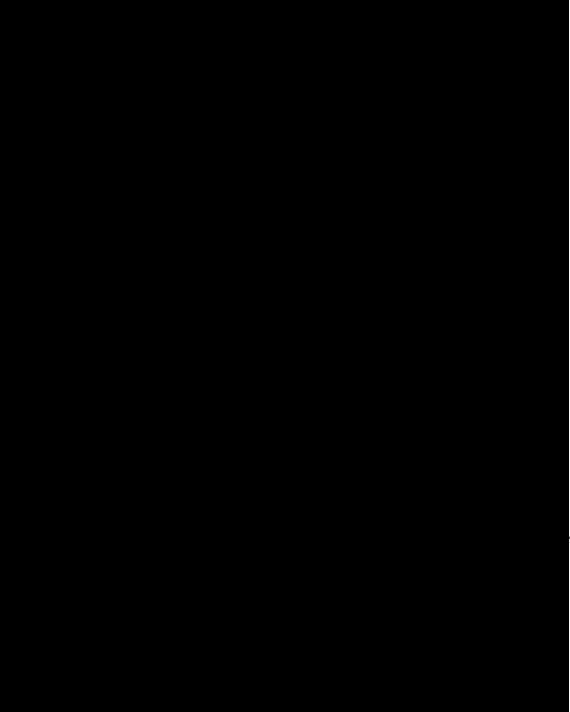
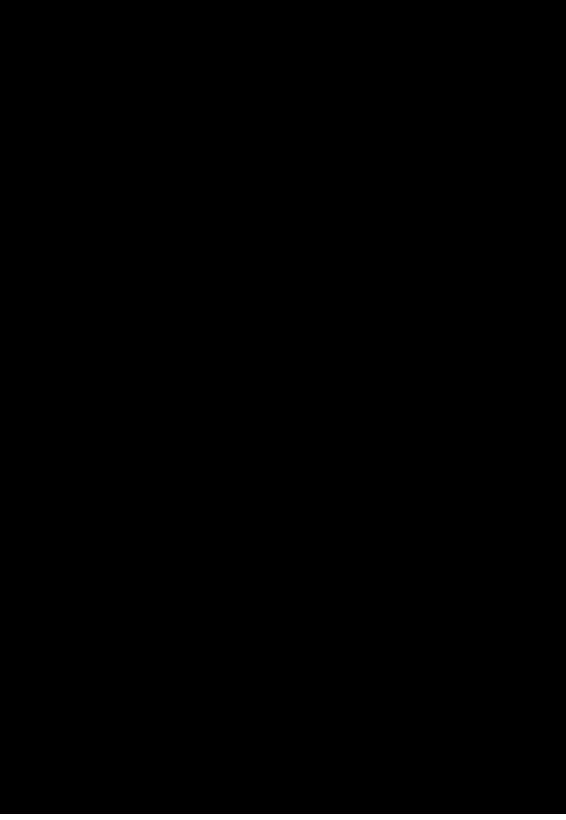
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<p style="text-align: right;">Page 278</p> <p>1 JOHN - HIGHLY CONFIDENTIAL 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> 	<p style="text-align: right;">Page 280</p> <p>1 JOHN - HIGHLY CONFIDENTIAL 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22</p> 
<p style="text-align: right;">Page 279</p> <p>1 JOHN - HIGHLY CONFIDENTIAL 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> 	<p style="text-align: right;">Page 281</p> <p>1 JOHN - HIGHLY CONFIDENTIAL 2 you what we will mark as Exhibit 17. 3 MS. SPEVACK: Exhibit 17. 4 (MSFT Exhibit 17, Document 5 entitled, "Xandr in Microsoft, Product 6 Synergies Sneak Peak," Bates Nos. 7 MSFT-LIT-0000003426 through 8 MSFT-LIT-0000003429, marked for 9 identification, this date.) 10 Q. Now, Mr. John, you recognize this 11 as a Xandr business record prepared on, dated 12 November 2022, in the ordinary course of 13 business? 14 A. Yes, I do. 15 Q. Okay. Now earlier when government 16 counsel asked you about when Xandr competed 17 with Google and asked you why Xandr did not 18 tend to win that competition, the first 19 reason you said was that Xandr didn't have 20 first-party properties. 21 Do you recall saying that? 22 MR. VERNON: Objection, 23 mischaracterizes. 24 A. The question was about specific to 25 the publisher ad server on display, and my</p>

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HIGHLY CONFIDENTIAL

<p style="text-align: right;">Page 282</p> <p>1 JOHN - HIGHLY CONFIDENTIAL 2 answer was about demand. 3 Q. Right. But before you spoke about 4 demand and we will get to demand, you said 5 Xandr didn't have first-party properties. Do 6 you remember saying that? 7 A. Correct. 8 Q. Okay. Is it the case that 9 Microsoft has first-party properties? 10 A. That is correct. 11 Q. And Microsoft has now acquired 12 Xandr, right? 13 A. That is correct. 14 Q. Now, you did also mentioned 15 availability of demand, and I would ask you 16 just to look at the document in front of you 17 dated November 2022. 18 A. Uh-huh, yes. 19 Q. And if you looked at the left-hand 20 side of the page, this is a Xandr document, 21 after the acquisition by Microsoft and it 22 refers to "Unique Demand." Do you see that? 23 A. That is correct. 24 Q. And if you look at "Unique Demand" 25 then there are four categories and the four</p>	<p style="text-align: right;">Page 284</p> <p>1 JOHN - HIGHLY CONFIDENTIAL 2 SSPs wide array of publisher inventory, 3 right? 4 A. I do not. 5 Q. And you don't dispute that when the 6 document says, Microsoft Audience Network 7 demand originated from Bing search and 8 Microsoft audience -- Microsoft Audience 9 Network audience buys, that it's describing 10 this as unique demand to which Xandr's 11 publishers will have access following the 12 Microsoft/Xandr acquisition? 13 A. That is correct. 14 Q. Okay. So you're bringing the 15 demand that Microsoft has access to as a 16 result of its search advertising to Xandr's 17 publishers through Xandr Monetize, correct? 18 A. Xandr publishers are one of the 19 publishers. MSAN is and will continue to 20 provide the demand to outside of Monetize as 21 well. 22 Q. Right. And while we're on the 23 topic of demand, you spoke earlier about how 24 sophisticated publishers on the supply side 25 are partnering with Xandr and so you</p>
<p style="text-align: right;">Page 283</p> <p>1 JOHN - HIGHLY CONFIDENTIAL 2 categories are projects that Microsoft and 3 Xandr are working on. Do you see that? 4 A. That is correct. 5 Q. And the first project is called 6 Microsoft Audience Network bidder 7 integration. Do you see that? 8 A. Yes, I do. 9 Q. And in the "Primary Audience and 10 Benefit" column, listing the primary audience 11 and benefits of the Microsoft Audience 12 Network bidder integration, it says, Monetize 13 SSP sellers will now get access to Microsoft 14 Audience Network demand originating from Bing 15 Search and Microsoft Audience Network 16 audience buys. Do you see that? 17 A. Yes, I do. 18 Q. All right. And then it says, 19 Microsoft Audience Network "buyers will be 20 able to access Monetize SSP's wide array of 21 publisher inventory." 22 Do you see that? 23 A. Yes, I do. 24 Q. And you don't dispute that this 25 Microsoft Xandr document refers to Monetize</p>	<p style="text-align: right;">Page 285</p> <p>1 JOHN - HIGHLY CONFIDENTIAL 2 mentioned Axel Springer, right? 3 A. That is correct. 4 Q. News Corp is one, right? 5 A. News Corp is not an Axel customer. 6 They're an SSP, but they're primarily Google 7 customer. 8 Q. Right, but they're a publisher that 9 works with Xandr? 10 A. As an SSP. 11 Q. As an SSP, Hulu? 12 A. Hulu did not work with us. 13 Q. How about CNN? 14 A. CNN as an SSP, not as an ad server 15 customer. 16 Q. How about Warner Media? 17 A. Warner Media did not use as an ad 18 server customer. 19 Q. SSP? 20 A. SSP, that's correct. 21 Q. And Netflix, we've already talked 22 about Netflix? 23 A. Correct. 24 Q. Now, if you look down on the 25 left-hand side of the page, also in the</p>

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HIGHLY CONFIDENTIAL

<p style="text-align: right;">Page 286</p> <p>1 JOHN - HIGHLY CONFIDENTIAL 2 category of "Unique Demand" the fourth 3 project it refers to, it is "Microsoft 4 audience" -- sorry -- 5 MS. DUNN: Strike that. 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED] 17 [REDACTED] 18 [REDACTED] 19 [REDACTED] 20 [REDACTED] 21 [REDACTED] 22 [REDACTED] 23 [REDACTED] 24 [REDACTED] 25 [REDACTED]</p>	<p style="text-align: right;">Page 288</p> <p>1 JOHN - HIGHLY CONFIDENTIAL 2 that? 3 MR. VERNON: About Outlook? 4 Objection to form mischaracterizes and 5 beyond the scope. 6 MS. DUNN: I'll rephrase. 7 Q. Do you recall being asked some 8 questions by government counsel about 9 Microsoft's view of the world in 2007? 10 A. Today? 11 Q. No, he asked you questions about 12 2007, when he was talking about -- 13 A. That's correct, during the talk, 14 yeah. 15 Q. This is the Microsoft website 16 today, as it appears today, and this is the 17 web page that talks about Xandr and premium 18 programmatic advertising. Do you see that in 19 front of you? If you look at the URL at the 20 top it says -- 21 A. The URL, correct. 22 Q. -- "Xandr programmatic premium 23 advertising"? 24 A. That's correct. 25 Q. And Microsoft, this is on</p>
<p style="text-align: right;">Page 287</p> <p>1 JOHN - HIGHLY CONFIDENTIAL 2 [REDACTED] 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 [REDACTED] 12 [REDACTED] 13 [REDACTED] 14 [REDACTED] 15 [REDACTED] 16 [REDACTED]</p> <p>17 I would like you to look now at 18 what we will mark as Exhibit 18. 19 (MSFT Exhibit 18, Document 20 entitled, "Reach audiences across 21 screens with premium advertising," 22 marked for identification, this date.) 23 Q. Now, you were asked by the 24 government counsel numerous questions about 25 Microsoft's Outlook in 2007. Do you recall</p>	<p style="text-align: right;">Page 289</p> <p>1 JOHN - HIGHLY CONFIDENTIAL 2 Microsoft's website and it's telling 3 advertisers and publishers that they can help 4 solve your buyers and sellers greatest 5 advertising challenges with Xandr's platforms 6 that enable you to unlock the full value of 7 running programmatic advertising campaigns 8 across screens and tapping into engaged 9 audiences. And so you don't disagree that 10 this is what Microsoft is telling people 11 today, do you? 12 A. I don't disagree. 13 Q. And if you look down, it refers to 14 the Xandr's end-to-end platforms? 15 A. That is correct. 16 Q. And would you do agree that having 17 an end-to-end platform helps prevent fraud? 18 MR. VERNON: Objection, leading, 19 also scope. 20 A. Yes. 21 Q. If you look at page 2 of the 22 printout from Microsoft's website, it says 23 that premium advertising is available for a 24 variety of formats through Microsoft. Do you 25 see that?</p>

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<p style="text-align: right;">Page 290</p> <p>1 JOHN - HIGHLY CONFIDENTIAL 2 A. Yes, that is correct. 3 Q. And it lists "connected TV, display 4 and native." Do you see that? 5 A. Yes, I do. 6 Q. And it doesn't say those are, you 7 know, aimed at different people, it just 8 talks about all three of those there, right? 9 MR. VERNON: Objection, vague. 10 A. Can you clarify? What do you mean 11 by that? 12 Q. Microsoft is telling people through 13 its website that you can reach your desired 14 audience with one of the world's largest 15 marketplaces; it's talking about Xandr, 16 right? 17 A. Yes, that is correct. 18 Q. And it specifically mentions that 19 that goes from connected TV to display to 20 native. You see that? 21 A. Right. You can reach the audience 22 through one of those marketplaces, correct. 23 Q. Right. 24 And it specifically advertises, if 25 you look down, there is a picture of the TV</p>	<p style="text-align: right;">Page 292</p> <p>1 JOHN - HIGHLY CONFIDENTIAL 2 says "across digital formats," what formats 3 it's talking about? 4 A. It's display, audio, video, CTV. 5 Q. All right. I would like to show 6 you, sir, our Tab 53. 7 (MSFT Exhibit 19, Document 8 entitled, "Xandr in Microsoft Product 9 Synergy Slides - Phase 2 - For buyers - 10 Talk Track," Bates Nos. 11 MSFT-LIT-0000004160 through 12 MSFT-LIT-0000004163, marked for 13 identification, this date.) 14 MS. SPEVACK: Exhibits 19. 15 MS. DUNN: Exhibit 19. 16 Q. This is a document -- 17 MR. VERNON: Can you wait until we 18 get copies? 19 MS. COLE: And the first page? 20 Metadata? 21 MS. DUNN: Yes, the first page is 22 metadata. This is a document produced 23 by Microsoft to Google and the date is 24 November 9, 2022, on this document. It 25 follows the Microsoft/Xandr acquisition</p>
<p style="text-align: right;">Page 291</p> <p>1 JOHN - HIGHLY CONFIDENTIAL 2 show "Stranger Things," and you can see in 3 the top left-hand corner that that's being 4 shown on Netflix. Do you see that? 5 A. Yes. 6 Q. And today Microsoft is touting, you 7 can see on page 3, its exclusive technology 8 and sales partnership with Netflix. Do you 9 see that? 10 A. Yes, I do. 11 Q. It says, "all CTV advertising 12 served on Netflix is exclusively available 13 through the Microsoft advertising platform." 14 Do you see that? 15 A. Yes, I do. 16 Q. And then if you go to the part at 17 the bottom of the "Advertiser Platform," 18 today what Microsoft is telling people who 19 may be interested in its products that it has 20 a robust data marketplace with access to 21 premium supply across digital formats and 22 flexible ways to transact. 23 Do you see that? 24 A. Yes, I do. 25 Q. And do you happen to know when it</p>	<p style="text-align: right;">Page 293</p> <p>1 JOHN - HIGHLY CONFIDENTIAL 2 and it is a talk track for buyers meant 3 to accompany slides. 4 Q. Do you have any reason to doubt 5 that this talk track for buyers was prepared 6 in the ordinary course of business by 7 Microsoft employees? 8 A. I don't know. 9 Q. All right. One of the things that 10 you talked about in your testimony with the 11 government attorney was demand, and so when 12 we're talking about demand, just to be clear, 13 you mean advertisers are the demand side, 14 right? 15 A. That is correct. 16 Q. And the point of the advertisers in 17 the demand is so that people can be reached 18 and see the ads, right? 19 MR. VERNON: Objection, leading. 20 A. That is one unique talk point, 21 audience reach, yes. 22 Q. Right. 23 And if you look at what it says in 24 the buyer talk track under slide 4, it talks 25 about the "Microsoft Advertising</p>

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<p style="text-align: right;">Page 294</p> <p>1 JOHN - HIGHLY CONFIDENTIAL 2 Marketplaces." Do you see that? 3 A. Yes, uh-huh, yes. 4 MR. VERNON: Show us where you are. 5 MS. DUNN: I'm on -- 6 MR. VERNON: Never mind. I'm good. 7 Q. And it describes Microsoft 8 advertising ecosystem as expansive. Do you 9 see that? 10 A. Which paragraph? The second one? 11 Q. It's on slide 4, "Microsoft 12 Advertising Marketplaces" and it says, 13 "Microsoft advertising's expansive 14 ecosystem." Do you see that? 15 A. Yes, I do. 16 Q. And Microsoft's expansive ecosystem 17 allows you access to over one billion people. 18 Do you see where it says that? 19 A. Yes, I do. 20 Q. Do you happen to know that a 21 billion people is a seventh of the population 22 on earth? 23 A. Yes, I do. 24 MS. COLE: That's beyond the scope. 25 Q. Now, do you have any reason to</p>	<p style="text-align: right;">Page 296</p> <p>1 JOHN - HIGHLY CONFIDENTIAL 2 And so when Microsoft and Xandr are 3 talking to the buyers about buying across 4 channels and formats, what they're talking 5 about is, at least, CTV, gaming, shopper 6 marketing, native and display, right? 7 MR. VERNON: Objection, 8 mischaracterizes native, display -- 9 Q. It that what it says? 10 A. It says advertisers were able to 11 reach across different audiences and 12 different formats. 13 Q. Right. And it's telling buyers, 14 advertisers that they can reach people 15 through CTV, gaming, shopper marketing and 16 native all as a result of Microsoft and 17 Xandr, right? 18 A. That is correct. 19 Q. Okay. All right. 20 MS. DUNN: Okay. I would like to 21 show you, if we can hand the witnesses 22 tabs 26, 27 and 28. 23 MS. SPEVACK: It will be 24 Exhibit 20. 25 (MSFT Exhibit 20, Natively produced</p>
<p style="text-align: right;">Page 295</p> <p>1 JOHN - HIGHLY CONFIDENTIAL 2 doubt that this is true? 3 A. I do not. 4 Q. Now, it then says, "Here's a closer 5 look at the inventory available." And it 6 mentions Microsoft search network, 7 Microsoft's owned and operated sites that we 8 went through, Microsoft Audience Network, 9 which includes MSN, Outlook and Edge and it 10 mentions PromoteIQ which is the retail outfit 11 that we talked about. Do you see that? 12 A. Yes, I do. 13 Q. And Microsoft also wants buyers to 14 know that Xandr is one of the largest global 15 programmatic marketplaces. Do you see that? 16 A. Yes, I do. 17 Q. Now if you look at slide 5 in the 18 buyers talk track. It says, "We're excited 19 to be working as part of Microsoft to create 20 new valuable opportunities for advertisers. 21 With Microsoft, we're gaining significant 22 momentum across CTV, gaming shopper marketing 23 and native - further strengthening Xandr and 24 Invest DSP as your strategic partner to buy 25 across channels and format."</p>	<p style="text-align: right;">Page 297</p> <p>1 JOHN - HIGHLY CONFIDENTIAL 2 document, PowerPoint presentation 3 entitled, "Welcome to Microsoft 4 Advertising," Bates Nos. 5 MSFT-LIT000002147, marked for 6 identification, this date.) 7 MS. SPEVACK: 21. 8 (MSFT Exhibit 21, Document, Bates 9 Nos. MSFT-LIT0000033249 through 10 MSFT-LIT0000033254, marked for 11 identification, this date.) 12 Q. I'm just going to ask you if 13 they're documents prepared in the ordinary 14 course of business. And I'm not going to ask 15 you any questions about them. 16 MS. SPEVACK: And 22. 17 (MSFT Exhibit 22, Natively produced 18 document, PowerPoint presentation 19 entitled, "Xandr Ad Server/Supplement," 20 Bates No. MSFT-LIT0000028835, pages 1 21 through 16, marked for identification, 22 this date.) 23 (Discussion off the record.) 24 Q. So those three documents that I 25 just handed to you --</p>

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<p style="text-align: right;">Page 318</p> <p>1 JOHN - HIGHLY CONFIDENTIAL 2 evolves, multiple players started picking 3 compared to the display advertising. 4 Q. Okay. 5 MR. VERNON: Could we go off the 6 record. Just give me two minutes. I 7 just want to make sure I asked all the 8 questions. 9 THE VIDEOGRAPHER: The time is 10 6:19 p.m. and we're off the record. 11 (A brief recess was taken.) 12 THE VIDEOGRAPHER: The time is 13 6:21 p.m. and we're back on the record. 14 Q. Do you have that document in front 15 of you that we were just looking at? 16 A. Yes, I do. 17 Q. And the one that refers to the 18 "marketplace lock-in in Display." Do you see 19 that? 20 A. Yes, I do. 21 Q. Earlier counsel asked you some 22 questions about meetings between the DOJ and 23 Microsoft with Xandr. Do you remember that? 24 A. Yes, I do. 25 Q. Did Microsoft or Xandr create this</p>	<p style="text-align: right;">Page 320</p> <p>1 2 STATE OF _____ 3) :ss 4 COUNTY OF _____ 5 6 7 I, BENNEASER JOHN, the witness 8 herein, having read the foregoing 9 testimony of the pages of this 10 deposition, do hereby certify it to be a 11 true and correct transcript, subject to 12 the corrections, if any, shown on the 13 attached page. 14 15 _____ 16 BENNEASER JOHN 17 18 Sworn and subscribed to before 19 me, this _____ day of 20 _____, 2023. 21 _____ 22 Notary Public 23 24 25</p>
<p style="text-align: right;">Page 319</p> <p>1 JOHN - HIGHLY CONFIDENTIAL 2 document that talks about marketplace lock-in 3 for display for purposes of showing it to the 4 DOJ? 5 A. Absolutely not. 6 MR. VERNON: Okay. With that, and 7 unless counsel for Google has further 8 questions, I'm done with my questions, 9 and I thank you and the court reporter 10 and the videographer and to everyone for 11 taking the time to sit here on a Friday. 12 THE WITNESS: Thank you, all. 13 MS. DUNN: Thank you very much. We 14 appreciate you very, very much. 15 THE VIDEOGRAPHER: We're going off 16 the record at 6:22 p.m., and this 17 concludes today's testimony given by Ben 18 John. The total number of media units 19 was five, and they will be retained by 20 Veritext. 21 (Time noted: 6:22 p.m.) 22 23 24 25</p>	<p style="text-align: right;">Page 321</p> <p>1 2 C E R T I F I C A T E 3 STATE OF NEW YORK) 4 : ss. 5 COUNTY OF NEW YORK) 6 I, Jennifer Ocampo-Guzman, a 7 Certified Realtime Shorthand Reporter and 8 Notary Public within and for the State of New 9 York, do hereby certify: 10 That BENNEASER JOHN, the witness 11 whose deposition is hereinbefore set forth, 12 was duly sworn, and that such deposition is 13 a true record of the testimony given by the 14 witness. 15 I further certify that I am not 16 related to any of the parties to this action 17 by blood or marriage, and that I am in no 18 way interested in the outcome of this 19 matter. 20 IN WITNESS WHEREOF, I have 21 hereunto set my hand this 12th day of September 2023. 22 23 24 <i>J. Ocampo-Guzman</i> JENNIFER OCAMPO-GUZMAN, CRR, CLR 25</p>